RECENT IMPORTANT DECISIONS

ADOPTION—INHERITANCE BY REPRESENTATION.—Testator by will left his property to his three brothers and mentioned his sister as having previously died without heirs. He made a codicil to his will revoking all its provisions in favor of one of his brothers. An adopted child of testator's sister claimed the right to inherit by representation a portion of the property covered by the codicil. *Held,* that under the Michigan statute (Comp. Laws of 1897, § 8780, Sec. 5), which provides that an adopted child shall become and be an heir at law of the person or persons adopting the same as if he or she were in fact the child of such person or persons, an adopted child is the heir of the adopting parent but is not the heir of the adopting parent's kindred. *Van Derlyn* v. *Mack* (1904), — Mich. —, 100 N. W. Rep. 278.

The right of the adopted child to inherit depends to a great extent upon the statutes enacted in the various states, but the courts in construing this legislation draw a distinction between the legal status created by adoption and blood relationship and hold that the adopted child may inherit from the adopting parent directly but cannot inherit from the blood relations of the adopting parent. *Schouler Domestic Rel.* § 232; *Humphries* v. *Davis,* 100 Ind. 274. In Maine, however, a somewhat different result was reached and it was held that the status of an adopted child was such that under a will it would take as lineal descendant, the legatee having died in the lifetime of the testator. *Warner* v. *Prescott,* 84 Me. 483.

ADVERSE POSSESSION—EFFECT OF FORMER JUDGMENT—STATUTE OF LIMITATIONS.—Plaintiffs claimed title by deed from one Martin. Defendant claimed by adverse possession for the statutory period of ten years under color of title, created by deed of gift from the same grantor. Defendant went into possession in 1876. In 1885 plaintiff brought ejectment and obtained judgment in 1887. After verdict, but before judgment, defendant abandoned the property, remaining away until 1893. The plaintiff never went into possession. *Held,* that plaintiff in a second action could not introduce the former judgment in evidence, no writ of possession having been obtained. *Bradford* v. *Wilson* (1904), — Ala. —, 37 So. Rep. 295.

The court's ruling was based on the principle that a prior judgment without dispossession under it is insufficient to break the continuity of an adverse holding. Many cases support the proposition. *Carpenter* v. *Water Co.,* 63 Cal. 616; *Smith* v. *Trabue,* 1 M'Lean 87; *Maybury* v. *Dollarhide,* 98 Mo. 198. A review of a number of cases on the point shows that in each case the defendant remained in possession after the judgment, while in the principal case the defendant voluntarily abandoned the property. A few cases hold that a judgment alone will create a severance in the adverse holding. *Brolasky* v. *McClain,* 61 Pa. St. 146; *Bright* v. *Stevens,* 1 Houst. 31. In this last case the facts were similar to those of the principal case, the court reaching a different conclusion. It is a principle well established by authority that the statute of limitations is suspended from the commencement of the action, not from the date of the judgment. *Hackworth* v. *Harlan's heirs* (Ky.), 19 S. W. Rep.

172; *Dunn* v. *Miller,* 75 Mo. 260; *Barrell* v. *Title Guarantee Co.,* 27 Ore. 77. It would seem then that a writ of possession would be unnecessary, since the constructive possession of the plaintiff attached immediately upon abandonment by defendant. *Steeple* v. *Downing,* 60 Ind. 478; *Crispen* v. *Hannavan,* 50 Mo. 536; *Allen* v. *Holton,* 20 Pick. 458; *Sharp* v. *Johnson,* 22 Ark. 79.

ADVERSE POSSESSION—STATUTE OF LIMITATIONS—JURISDICTION OF THE DEPARTMENT OF THE INTERIOR.—Plaintiff in 1896 as the assignee in trust of the H. & D. Ry. Co. commenced this action in ejectment to recover lands within the primary limits of land grants to his assignor. The same lands were within the indemnity limits of the grants to the St. P. M. & M. Ry. Co. The H. & D. Co. filed its map of definite location in 1867 and completed the road in 1880. Patent was issued to it in 1891. The defendant, Rudnick, was in possession under claim of homestead, since 1877. The St. P. M. & M. Ry. Co. made no claim to the land in question until 1883, from which time until 1891 the controversy was before the Department of the Interior, when the title was confirmed in plaintiff's assignor. *Held,* defendant acquired title by adverse possession, the statute of limitations not being suspended from 1883 to 1891. *Sage* v. *Rudnick* (1904), — Minn. —, 100 N. W. Rep. 116.

This decision reverses the court's former holding on the same case. *Sage* v. *Rudnick,* 98 N. W. Rep. 89. See 2 Mich. Law Rev. 630. The first decision followed *Ry. Co.* v. *Olson,* 87 Minn. 117. In reversing the case on rehearing, the court holds that *Ry. Co.* v. *Olson* is to be distinguished in principle, the parties before the land office not occupying the same relation to the property. The principal case seems to have the weight of authority in its support. It recognizes the well established principle that when a person is prevented from exercising his legal remedy by some paramount authority, the time during which he is so prevented is not to be counted against him in determining whether the statute of limitations has barred his right. *Ry. Co.* v. *Olson,* 87 Minn. 117; 19 AM. & ENG. ENC. L. (2nd Ed.) 216. In view of the facts, however, the court held the case did not come within the rule, as the title passed to the H. & D. Ry. Co. upon filing the map of definite location. *Schulenberg* v *Harriman,* 21 Wal. 44; *Ry. Co.* v. *Phelps,* 137 U. S. 528; *Deseret Salt Co.* v. *Tarpey,* 142 U. S. 241; *Ry. Co.* v. *Baldwin,* 103 U. S. 426; *Toltec Ranch Co.* v. *Cook,* 191 U. S. 532. While in most cases the government retains title to the public lands until issuance of a patent, yet railroad grants are usually an exception to this rule as they are almost invariably grants in praesenti, a patent being issued merely as evidence of the title. TIFFANY REAL PROP., §§ 371, 374; *Ry. Co.* v. *Price County,* 133 U. S. 496; *St. P. & Pac.* v. *N. P. Ry. Co.,* 139 U. S. 1; *Carter* v. *Ruddy,* 166 U. S. 493; *Langdeau* v. *Haines,* 21 Wal. 211. The government therefore having no interest in the land, the title having passed to plaintiff's assignor, the courts and not the Department of the Interior had jurisdiction over the controversy between the two railroad companies. *Peyton* v. *Desmond,* 129 Fed. Rep. 1; *Bockfinger* v. *Foster,* 190 U. S. 116; *Parcher* v. *Gillen,* 26 Land Dec. 34; *Noble* v. *Ry. Co.,* 147 U. S. 165. The plaintiff's right to bring ejectment not having been suspended, defendant's adverse possession had ripened into title.